

This Page Is Inserted by IFW Operations
and is not a part of the Official Record

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

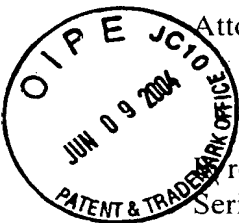
Defects in the images may include (but are not limited to):

- BLACK BORDERS
- TEXT CUT OFF AT TOP, BOTTOM OR SIDES
- FADED TEXT
- ILLEGIBLE TEXT
- SKEWED/SLANTED IMAGES
- COLORED PHOTOS
- BLACK OR VERY BLACK AND WHITE DARK PHOTOS
- GRAY SCALE DOCUMENTS

IMAGES ARE BEST AVAILABLE COPY.

**As rescanning documents *will not* correct images,
please do not report the images to the
Image Problem Mailbox.**

1fw
DAC



Attorney Docket No. 5573-115IP7CT7

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Whittle *et al.*

Serial No.: 10/769,021

Filed: January 30, 2004

For: *Pharmaceutical Formulations*

Confirmation No.: 9712

Group Art Unit: 1614

Date: June 7, 2004

Office of Patent Legal Administration
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO ACCORD THE PROPER FILING DATE

Sir:

As set forth in 37 CFR § 1.10(c) and MPEP § 506.02, Applicants hereby petition to grant the proper filing date of January 30, 2004 rather than February 2, 2004 for the above-identified patent application as this was the date the application was deposited as "Express Mail" in the U.S. Postal Service. The following is enclosed as evidence of January 30, 2004 being the correct filing date for the application, which was properly filed under 37 C.F.R. § 1.10:

1. A true and accurate copy of the Cover Sheet for the Application showing the Express Mail signature and date on Page 2;
2. A true and accurate copy of the Express Mail Receipt showing "acceptance" or deposit date with the USPS on January 30, 2004; and
3. A true and accurate copy of our return post card and of the official filing receipt for this application, sent by the United States Patent and Trademark Office, showing that Applicants were improperly given the filing date of February 2, 2004 instead of the Express Mail date of January 30, 2004.

This petition is being filed promptly after Applicants became aware of the improperly accorded filing date. Accordingly, Applicants respectfully request the granting of January 30, 2004 as the filing date pursuant to 37 CFR § 1.10.

On the basis that Applicants properly followed the requirements of 37 CFR § 1.10 and the USPTO failed to accord the proper filing date under MPEP § 505 and thus the need to file this petition is due to error on the part of the USPTO, it is applicants' belief that no fee is due

In re: Whittle *et al.*
Serial No.: 10/769,021
Filed: January 30, 2004
Page 2

with this petition. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

Respectfully submitted,

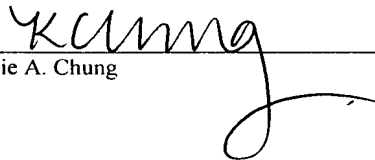


Jarett K. Abramson
Attorney For Applicants
Registration No. 47,376

USPTO Customer No. 20792
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401

Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 7, 2004.


Katie A. Chung



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

ATTY DOCKET NO.: 5573-115IP7CT7

DATE: January 30, 2004

**UTILITY PATENT APPLICATION TRANSMITTAL LETTER
AND FEE TRANSMITTAL FORM (37 CFR § 1.53(b))**

Mail Stop PATENT APPLICATION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COPY

Sir:

Transmitted herewith for filing under 37 CFR § 1.53(b) is:

- ☐ a patent application
☒ a Continuation ☐ a Divisional ☐ a Continuation-in-Part (CIP) Application of prior US application no.: 10/434,259, pending, filed May 8, 2003, which is a continuation of U.S. Patent No. 6,667,321, filed July 3, 2002, which is a continuation of U.S. Patent No. 6,444,689, filed January 25, 2002, which is a continuation of U.S. Patent No. 6,369,087, filed August 24, 2000, which is a continuation-in-part of U.S. Patent No. 6,262,085, filed March 7, 2000, the disclosures of which are incorporated herein by reference in their entireties.
☒ and claims the benefit of Provisional Application No. 60/150,878, filed August 26, 1999.

Inventor(s) or Application Identifier:

Robert R. Whittle;
Frederick D. Sancilio;
Grayson Walker Stowell;
Douglas John Jenkins;
Linda B. Whittall

Entitled: **Pharmaceutical Formulations**

Myers Bigel Sibley & Sajovec, P.A.
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401
Customer No. 20792

Enclosed are:

1. ☒ Application Transmittal Letter and Fee Transmittal Form (*A duplicate is enclosed for fee processing*)
2. ☒ 135 pages of Specification (including 20 claims)
3. ☐ sheets of Formal Drawings (35 USC 113)
4. ☒ Oath or Declaration
 - a. ☐ newly executed (*original or copy*)
 - b. ☒ copy from prior application (37 CFR 1.63(d) (*for continuation/divisional*) [Note Box 6 Below]
 - c. ☐ DELETION OF INVENTOR(S) (*Signed statement deleting inventor(s) named in the prior application*)
5. ☐ Application Data Sheet. See 37 CFR 1.76
6. ☒ Incorporation By Reference (*useable if box 4b is checked*)

The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under

Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

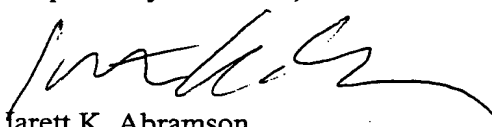
7. ☐ Microfiche Computer Program (*Appendix*)
8. ☐ Assignment papers (*cover sheet(s) and document(s)*)
9. ☐ Applicant claims small entity status. See 37 CFR § 1.27.
10. ☒ Information Disclosure Statement, PTO-1449, and 0 references cited
11. ☐ Preliminary Amendment (*Please enter all claim amendments prior to calculating the filing fee.*)
12. ☐ English Translation Document
13. ☐ Certified Copy of Application No. ; Filed
14. ☐ Sequence Listing/ Sequence Listing Diskette
 - a. ☐ computer readable copy
 - b. ☐ paper copy
 - c. ☐ statement in support
15. ☐ An Associate Power of Attorney
16. ☒ Return Receipt Postcard (MPEP 503) (*Should be specifically itemized*)
17. ☐ Deletion of Inventor(s) (Signed statement attached deleting inventor(s) name in the prior application. See 37 CFR 1.63(d)(2) and 1.33(b).
18. ☐ Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i). Applicant must attach form.
19. ☐ Other:

The fee has been calculated as shown below:

	Column 1 No. Filed	Column 2 No. Extra	Small Entity Rate Fee	Large Entity Rate Fee
BASIC FEE			\$385.00	\$ 770.00
TOTAL CLAIMS	20 - 20 =	0	x 09 = \$	x 18 = \$
INDEP CLAIMS	4 - 3 =	1	x 43 = \$	x 86 = \$86.00
<input type="checkbox"/> MULTIPLE Dependent Claims Presented			+ 145 = \$	+ 290 = \$
If the difference in Col. 1 is less than zero, Enter "0" in Col. 2			Total \$	Total \$856.00

- ☒ A check in the amount of **\$856.00** to cover the filing fee is enclosed.
- ☐ A check in the amount of \$ is enclosed to cover the filing fee, PLUS the Assignment Recordation fee (\$40.00).
- ☐ Please charge my Deposit Account No. 50-0220 in the amount of \$
- ☒ The Commissioner is hereby authorized to credit overpayments or charge the following fees associated with this communication to Deposit Account No. 50-0220:
 - a. ☒ Additional filing fees under 37 CFR 1.16 for presentation of extra claims.
 - b. ☒ Additional patent application processing fees under 37 CFR 1.17.

Respectfully submitted,

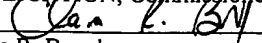

Jarett K. Abramson
Registration No. 47,376

CERTIFICATE OF EXPRESS MAILING

Express Mail Label No. EV 193584123 US

Date of Deposit: January 30, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop PATENT APPLICATION, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450


Clara R. Beard



EV 193584123 US



UNITED STATES POSTAL SERVICE®

Post Office To Addressee

ORIGIN (POSTAL USE ONLY)			DELIVERY (POSTAL USE ONLY)		
PO ZIP Code 27622	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second <input type="checkbox"/>	Flat Rate Envelope <input type="checkbox"/>	Delivery Attempt Mo. Day	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Date In Mo. Day Year	<input checked="" type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$ 17.85	Delivery Attempt Mo. Day	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Time In <input type="checkbox"/> AM <input type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee	Delivery Date Mo. Day	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee	<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials TMM	Insurance Fee	NO DELIVERY: <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		
CUSTOMER USE ONLY METHOD OF PAYMENT: Express Mail Corporate Acct. No. 1275081			Federal Agency Acct. No. or Postal Service Acct. No.		
FROM: (PLEASE PRINT) PHONE 919 854 1400 MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH NC 27627-7428 JRA/CIB 5575-1151 P7677			TO: (PLEASE PRINT) PHONE Mail Stop Patent Application Commissioner for Patents PO Box 1450 Alexandria, VA 22313-1450		

PRESS HARD.
You are making 3 copies.

FOR PICKUP OR TRACKING CALL 1-800-222-1811 www.usps.com

COPY



JKA/kib Date: Jan. 30, 2004
02-12-04 A09 Doc. No. 5573-1151071P7
Serial No. TO Be Assigned
Inventor: Whittle et al.

10/769021

Respectfully submitted,
MYERS BIGEL SIBLEY & SAJOVEC, P.A. 020204
Attorneys for Applicant



JKA



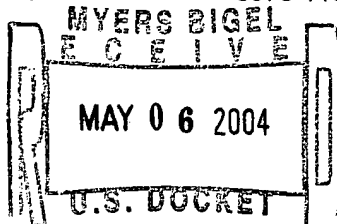
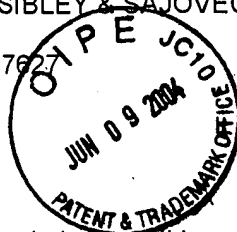
UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/769,021	02/02/2004	1614	856	5573-115IP7CT7		20	4

20792

MYERS BIGEL SIBLEY & SAJOVEC
 PO BOX 37428
 RALEIGH, NC 27627



CONFIRMATION NO. 9712

FILING RECEIPT



OC000000012502208

Date Mailed: 05/03/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Robert R. Whittle, Wilmington, NC;
 Frederick D. Sancilio, Wilmington, NC;
 Grayson Walker Stowell, Wilmington, NC;
 Douglas John Jenkins, Wilmington, NC;
 Linda B. Whittall, Wilmington, NC;

COPY

Domestic Priority data as claimed by applicant

This application is a CON of 10/434,259 05/08/2003 PAT 6,706,737
 which is a CON of 10/189,659 07/03/2002 PAT 6,667,321
 which is a CON of 10/057,659 01/25/2002 PAT 6,444,689
 which is a CON of 09/645,145 08/24/2000 PAT 6,369,087
 which is a CIP of 09/519,976 03/07/2000 PAT 6,262,085
 which claims benefit of 60/150,878 08/26/1999

Foreign Applications

If Required, Foreign Filing License Granted: 04/30/2004

Projected Publication Date: 08/12/2004

Non-Publication Request: No

05-05-04 A09:21 IN

Early Publication Request: No

Title

Alkoxy substituted benzimidazole compounds, pharmaceutical preparations containing the same, and methods of using the same

Preliminary Class

514

**LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).